

FCC MAIL SECTION Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 4 3 34 PM '93

MM Docket No. 93-221 ✓

DISPATCHED BY
In the Matter of

Amendment of Section 73.202(b) RM-8265
Table of Allotments,
FM Broadcast Stations.
(East Wenatchee, Ephrata and Chelan,
Washington)

**NOTICE OF PROPOSED RULE MAKING AND
ORDER TO SHOW CAUSE**

Adopted: July 21, 1993;

Released: August 4, 1993

Comment Date: September 24, 1993

Reply Comment Date: October 12, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Hartline Broadcasters ("petitioner"), proposing the allotment of Channel 229C2 at East Wenatchee, Washington, as its second local FM transmission service. In order to accommodate the allotment at East Wenatchee, petitioner also proposes the deletion of vacant Channel 230C2 at Ephrata, Washington, the substitution of Channel 238A for Channel 228A at Chelan, Washington, and the modification of Station KOZI-FM's license accordingly.¹ Petitioner states its intention to apply for the Channel 229C2 at East Wenatchee, if allotted.

¹ Petitioner also proposed removing the reservation on Channel 222C2 at Ephrata and opening that channel for applications. It noted that the Commission's staff substituted Channel 222C2 for Channel 240A at Ephrata at the request of the licensee of Station KULE-FM (formerly KGDN(FM)), Channel 240A, by Report and Order in MM Docket No. 87-326, 4 FCC Rcd 307 (1989). Channel 230C2 was also allotted to Ephrata as an additional equivalent class channel for application. Petitioner noted that at the time it filed its petition for rule making, the licensee of Station KULE-FM, Basin Street Broadcasting ("BSB"), had not filed an application to implement the upgrade. Therefore, petitioner contended that the FM Table of Allotments should be modified by deleting the reservation for Channel 222C2 and adding Channel 240A to reflect accurately the operation of Station KULE-FM on Channel 240A. On June 7, 1993, BSB filed a Form 301 application (File No. BPH-930607IF) to upgrade Station KULE-FM to Class C2 facilities at Ephrata.

On June 11, 1993, the Commission advised BSB by letter that a petition for rule making was filed which would be short-spaced to the reference coordinates of vacant Channel 230C2 at Ephrata, Washington, and which requested the deletion of Channel 230C2 at Ephrata and the substitution of Channel

2. We believe the public interest would be served by proposing the allotment of Channel 229C2 at East Wenatchee, Washington, since it could provide the community with its second local FM transmission service. An engineering analysis has determined that Channel 229C2 can be allotted to East Wenatchee in compliance with the Commission's minimum distance separation requirements at petitioner's requested site with a restriction of 6.8 kilometers (4.2 miles) west, provided Channel 230C2 at Ephrata is deleted.² The second filing window for this channel closed on May 27, 1993, and no applications were filed. If no applications are filed for Channel 230C2 by the comment date in this proceeding, we will delete the channel. Channel 238A can be substituted for Channel 228A at Chelan, at Station KOZI-FM's licensed site.³ Since East Wenatchee and Chelan are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

3. Whenever an existing station is ordered to switch frequency in order to accommodate a new allotment, we require that the proponent of the new allotment make a commitment that it would reimburse the affected station for the costs incurred in changing frequency. Accordingly, if the channel substitution at Chelan is ultimately adopted, the licensee of Station 228A at Chelan, Washington, is entitled to reimbursement for the reasonable cost involved in the change of its operating channel. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness, if the successful applicant for Channel 229C2 at East Wenatchee, to reimburse Station KOZI-FM for reasonable costs in changing frequency. This reimbursement statement is also expected of any other interested party for Channel 229C2 at East Wenatchee, or any counterproponent whose proposal would likewise require the Chelan substitution. Failure to provide such a commitment could result in a denial of the proposal. See *Brookville and Punxsutawney, Pennsylvania*, 3 FCC Rcd 5555 (1988).

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

222C2 as an equivalent class channel. The letter also advised BSB that unless an FCC Form 301 application for a construction permit for Class C2 facilities was filed within 30 days, BSB would be a party to the rule making proceeding and its allotment could be downgraded. BSB was also notified that no extensions of this 30-day period would be granted. See Letter from Chief, FM Branch, to BSB (June 11, 1993). In light of the application filed on June 7, 1993, the letter is moot, and in addition we will not propose any action with respect to Channel 222C2 at Ephrata.

However, there has been no expression of interest for vacant Channel 230C2 at Ephrata. Accordingly, in order to accommodate petitioner's proposal, we shall propose the deletion of vacant Channel 230C2 at Ephrata.

² The coordinates for Channel 229C2 at East Wenatchee are North Latitude 47-25-18 and West Longitude 120-22-53.

³ The coordinates for Channel 238A at Chelan are North Latitude 47-51-07 and West Longitude 119-52-18.

City	Channel No.	
	Present	Proposed
East Wenatchee, Washington	266A	229C2, 266A
Ephrata, Washington	222C2, 230C2	222C2
Chelan, Washington	228A	238A

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Northcentral Broadcasting, licensee of Station KOZI-FM, Chelan, Washington, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 238A in lieu of 228A.

6. Pursuant to Section 1.87 of the Commission's Rules, Northcentral Broadcasting may, not later than **September 24, 1993**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Northcentral Broadcasting to furnish additional information. If Northcentral Broadcasting raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Northcentral Broadcasting will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Northcentral Broadcasting
P.O. Box 819
Chelan, Washington 98816
(Licensee for Station KOZI-FM)

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **September 24, 1993**, and reply comments on or before **October 12, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John F. Garziglia, Esq.
Pepper & Corazzini
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel for Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also

expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.